

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2510 of 1997

Date of decision: 12-8-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ARVINDBHAI UMEDBHAI PATEL

Appearance:

Mr. Mukesh Patel for Appellants

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/08/98

ORAL JUDGEMENT

This appeal is directed by the appellants against

the judgment and decree passed by the 5th Civil Judge (Senior Division), Mehsana, on 29th April, 1997 in Special Civil Suit No.13 of 1990, under which the learned Judge has awarded Rs.4,000/- to the plaintiff-respondent towards expenses for delivery and second family planning operation. Court fees payable on the suit was Rs.3,300/-. While deciding the suit the court has ordered for recovery of the amount of court fees from the plaintiff-respondent. So in case this amount of Rs.3,300/- is recovered from the plaintiff-respondent from the decretal amount, then the balance amount which remains is only Rs.700/-. Though prima facie the appellant has a case for consideration of this court, in view of the fact that the court has awarded only Rs.4,000/- towards expenses for delivery and second family planning operation, this appeal deserves to be dismissed only on the ground of petty amount of claim.

2. The learned trial court has held that the plaintiffs-respondents have not proved the negligence and or carelessness of the doctor and on that ground they are not entitled to any compensation. After recording this finding, no doubt no amount could have been awarded. Still the learned trial court has, taking into consideration the point that due to failure of the first operation unwanted child was there and plaintiff No.2 had undergone second family planning operation, decree for Rs.4,000/- towards expenses for delivery and second family planning operation has been passed.

3. Taking into consideration totality of the facts of the case and the fact that the amount involved in the appeal is petty and small, and the fact that the first family planning operation failed, no interference with the judgment on merits is called for. However, in this appeal no interference is made by this court particularly keeping in view the petty and small claim involved, and it may not be taken to be a decision on merits, i.e. decision confirming the judgment and decree of the trial court. Before parting with this judgment I consider it to be appropriate to state for conveying to the State Government that in such matters appeal may not be filed as it costs more than the amount which has been decreed by the court below, and consequently unnecessarily increases the work of this court, which is already heavily burdened. In the result this appeal fails and the same is dismissed.

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